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IN THE

Supreme Court Of The United States

October Term 1983

LOU RAINES RIFFE, Administratrix
of the Estate of Don C. Riffe
Petitioner,

v.

INTERNATIONAL HARVESTER COMPANY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

BRIEF FOR RESPONDENT

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Supreme Court Of The United States

OCTOBER TERM, 1983

NO. 83-1207

LOU RAINES RIFFE, Administratrix of the Estate of Don C. Riffe — PETITIONER

VS:

INTERNATIONAL HARVESTER COMPANY — RESPONDENT

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

The Respondent, International Harvester Company,[1] offers this Brief in Opposition to the Petition for Writ of Certiorari to the Supreme Court of Kentucky.

I. INTRODUCTION

This is a products liability action which was brought in the Martin Circuit Court of the Commonwealth of Kentucky under state law alleging that International Harvester Company was responsible for

[1] International Harvester Company is an independent publicly held corporation. Its subsidiaries are wholly owned, and it is not affiliated with any other domestic corporation.

the death of the Petitioner's decedent and is liable in damages to her. The case was prosecuted and tried under the procedural and substantive laws of Kentucky. A judgment upon a jury verdict was entered against International Harvester Company.

International Harvester Company appealed this judgment to the Court of Appeals of Kentucky. The Court of Appeals determined the Petitioner had not met her burden of proof under the Kentucky Product Liability Act, Ky. Rev. Stat. §§ 411.300, *et seq.* and ruled that the Circuit Court should have granted International Harvester Company's motion for a directed verdict. The trial court was directed to enter a new judgment dismissing the complaint against Harvester. The text of the Court of Appeals opinion was included in the Appendix to the Petition for Writ of Certiorari at pages A-5 through A-18.

The Petitioner filed a motion for discretionary review in the Supreme Court of Kentucky. (This motion is included in Petitioner's Appendix at pages A-20 through A-61.) As required by Ky. R. Civ. P. 76.20(3)(d), the Petitioner set out expressly the issues she sought to have reviewed by the Supreme Court of Kentucky. They were as follows:

> (a) Whether the Court of Appeals properly interpreted Kentucky's Product Liability Act (Petitioner's Appendix, p. A-40);
>
> (b) Whether the Court of Appeals improperly substituted its opinion for the jury's finding of fact (Petitioner's Appendix, p. A-47);

(c) Whether the Court of Appeals' opinion encourages misdesign in defective design cases (Petitioner's Appendix, p. A-55).

The Supreme Court of Kentucky denied the motion for discretionary review on October 26, 1983. Petitioner's Appendix A-3 through A-4.

II. THE FEDERAL QUESTION WHICH THE PETITIONER NOW SEEKS TO RAISE WAS NEITHER PRESENTED TO NOR DECIDED BY THE SUPREME COURT OF THE COMMONWEALTH OF KENTUCKY.

It is the Court of Appeals of Kentucky itself which the Petitioner alleges violated the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. Therefore, the federal claim had to have been presented in the motion for discretionary review, if at all.[2] But it is not found there. *See* Petitioner's Appendix, pp. A-20-A-61.

[2]The Supreme Court of Kentucky Rules of Practice provide that a denial of a motion for discretionary review is final disposition of the matter. Ky. R. Civ. P. 76.20(e) states in part: "A ruling by the Supreme Court granting or denying a motion for discretionary review will not be reconsidered by the Supreme Court." Evidently recognizing she had not presented any reviewable federal question, on November 22, 1983 the Petitioner attempted to file a Petition for Rehearing outside the procedural rules, alleging a violation of due process of law by the Court of Appeals. This petition was treated as a motion for leave to file a petition for rehearing and was denied on December 16, 1983 by the Supreme Court of Kentucky.

The Rules of the United States Supreme Court make clear that the history of the federal issue is to be presented lucidly in the Petition for Writ of Certiorari. Sup. Ct. R. 21.1(h) directs that the Statement of the Case in the Petition for Writ of Certiorari "specify the stage in the proceedings, both in the court of first instance and in the appellate court, at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by the Court; . . ." The rule also requires appropriate excerpts of the record to assist the Court in determining at the outset whether a federal question was presented and decided by the state court such as would give the United States Supreme Court jurisdiction to hear this matter.

The Petitioner was content in her Petition for Writ of Certiorari to maintain that her argument in her motion for discretionary review below that the Court of Appeals of Kentucky improperly substituted its opinion for the jury's findings of fact "clearly raised the contention that the Court of Appeals' action constituted a denial of Petitioner's due process rights." Petition for Writ of Certiorari at 6. Frankly, it would have taken a douser and his divining rod to have found the federal issue in that ground for review by the Supreme Court of Kentucky.

The Petitioner did not comply with Sup. Ct. R. 21.1(h) because the federal claim was not presented nor was it decided by the Supreme Court of Kentucky.

The Petitioner does not relate the "method or manner of raising" the federal issue nor the "way [it was] passed upon by the federal court" simply because no federal claim was introduced or considered in this case. This case arose under and was decided upon state law principles solely. The Petitioner first thought about a federal issue only after the Supreme Court of Kentucky denied the motion for discretionary review.

The Respondent submits this case is controlled by *Webb.* v. *Webb*, 451 U.S. 493 (1981). The federal issue presented similarly was obscured from the state court in that case. This Court made an observation pertinent to the case at bar:

> We note first that nowhere in the opinion of the Georgia Supreme Court is any federal question mentioned, let alone expressly passed upon. Nor is any federal issue mentioned by the dissenting opinion in that court. This Court has frequently stated that when "the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary."

Id. at 495-96, *quoting Street* v. *New York*, 394 U.S. 576, 582 (1969).

In the absence of an express consideration of the federal issue by the state court, this Court will

presume the federal question was not properly presented below.

> It is a long-settled rule that the jurisdiction of this Court to re-examine the final judgment of a state court can arise only if the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system.

Webb v. *Webb*, *supra* at 496-97.

In the final analysis, the principles of comity respected in our system of federalism put great emphasis on giving the State Court the first opportunity to pass on any federal issue supposedly embraced in a case:

> At the minimum, however, there should be no doubt from the record that a claim under a *federal* statute or the *Federal* Constitution was presented in the state courts and that those courts were apprised of the nature or substance of the federal claim at the time and in the manner required by the state law. Otherwise, we cannot be sufficiently sure, when the state court whose judgment is being reviewed has not addressed the federal question that is later presented here, that the issue was actually presented and silently resolved by the state court against the petitioner or the appellant in this Court.

Webb v. *Webb*, *supra* at 501 (emphasis by the Court).

The Bill of Rights of the Constitution of Kentucky treats trial by jury as a right "held sacred . . . and inviolate." Ky. Const. §§ 7. Our Constitution guarantees all persons, individual and corporate, access to Kentucky Courts and "remedy by due course of law . . . ." Ky. Const. §§ 14. With full knowledge of these Constitutional provisions, the Petitioner at no time asserted she had been deprived wrongfully of her rights. The Court of Appeals and the Supreme Court of Kentucky were cognizant of their duty to insure that both the Petitioner and Respondent received all rights and benefits due in this litigation. The ruling of the Supreme Court of Kentucky *is* the result of the "due course of law." Only after receiving a result unsatisfactory to her does she now seek to advance a "due process of law" argument.

Finally, Petitioner refers to *Bose Corp.* v. *Consumers Union of the United States, Inc.*, No. 82-1246 as support for her petition. But that case concerns questions of appellate review of trial court findings of "actual malice" such as would remove First Amendment protection from printed magazine articles. It does not concern state appellate review of state causes of action for sufficiency of evidence.

The Supreme Court of Kentucky was not given the opportunity nor asked to determine the federal question the Petitioner now advances. The Petition should be denied.

III. THE JUDGMENT OF THE SUPREME COURT OF KENTUCKY IS FOUNDED UPON INDEPENDENT STATE GROUNDS.

As was noted in Section 2, *supra*, the jurisdiction of the United States Supreme Court to review decisions of the highest court of a state is limited. "Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights." *Herb* v. *Pitcairn*, 324 U.S. 117, 125-26 (1945). In cases which concern the adjudication of rights under state law, state law supplies the rules of decision. 28 U.S.C. § 1652. Additionally, "[t]his Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds." *Herb* v. *Pitcairn*, 324 U.S. at 125. This case was decided by the state courts under state law, and therefore is not subject to review on writ of certiorari.

The Petitioner asserted in her Petition for Writ of Certiorari that the Kentucky Product Liability Act, Ky. Rev. Stat. § 411.300, *et seq.* was not at issue in this Petition. Petition for Writ of Certiorari at *vii.* However, that was not her position below. In her motion for discretionary review by the Supreme Court of Kentucky, the primary question of law advanced was "whether the Court of Appeals properly interpreted Kentucky's Product Liability Act." Petitioner's Appendix page A-40.

An examination of the opinion of the Court of Appeals of Kentucky discloses that its decision was

based solely upon the interpretation of this state statute and the Petitioner's failure to present evidence sufficient to make out a jury issue under the provisions of that statute. *International Harvester Company* v. *Riffe*, No. 82-CA-403-MR, Slip. Op. (June 3, 1983) (Petitioner's Appendix at A-5 through A-18).

The United States Supreme Court "repeatedly has held that state courts are the ultimate expositors of state law, ..." *Mullaney* v. *Wilbur*, 421 U.S. 684, 691 (1975). By definition this principle includes the determination of whether a party has met the burden of proof set out under the state law:

> The question of whether evidence is sufficient to make out a cause of action created by state law and tried in the state courts is a matter for decision by those courts.

American Radio Association, AFL-CIO v. *Mobile Steamship Association, Inc.*, 419 U.S. 215, 231 (1974).

Kentucky's Product Liability Act sets out in Ky. Rev. Stat. § 411.310 certain standards of proof and statutory presumptions which the General Assembly of Kentucky has determined must be met before a product can be considered "unreasonably dangerous" in an action tried under Kentucky law. The Court of Appeals of Kentucky reviewed the evidence presented by the Petitioner at her trial and determined that the evidence submitted was insufficient to rebut the presumption of that statute. The Supreme Court of

Kentucky declined to review the decision of the Court of Appeals. Now the Petitioner complains that the evaluation of her evidence in light of the procedural and substantive rules of the Commonwealth of Kentucky is a violation of due process of law.

However, her argument ignores the standards set out frequently by this Court, even in the case cited by the Petitioner as support for her argument. *Logan* v. *Zimmerman Brush Company*, _____ U.S. _____, 102 S. Ct. 1148, 1158 (1982) states:

> The State may erect reasonable procedural requirements for triggering the right to an adjudication, be they statutes of limitation, or, in an appropriate case filing fees, and the State certainly accords *due* process when it terminates a claim for failure to comply with a reasonable procedural or evidentiary rule. (emphasis by the Court).

It long has been a rule of law of the Commonwealth of Kentucky that "[a] reviewing court has the power to set aside a verdict on the ground that it is not sufficiently supported by the evidence." *Commonwealth, Department of Highways* v. *Dillon*, 525 S.W.2d 658, 659 (Ky. 1975); *Higgans* v. *Deskins*, 263 S.W.2d 108 (Ky. 1953). The Petitioner does not complain that she was not accorded a procedure or benefit of substantive law otherwise provided to litigants in the Commonwealth of Kentucky. Frankly, her complaint is that her presentation of evidence was adjudged insufficient.

This is an application of state law by a state court to a state cause of action, and it is controlling in the Supreme Court of the United States. *Scripto, Inc.* v. *Carson*, 362 U.S. 207 (1960), *see Exxon Corporation* v. *Eagerton*, _____ U.S. _____, 103 S. Ct. 2296, 2301 fn. 3 (1983).

CONCLUSION

In the final analysis, the Petitioner was accorded due process of law at all stages in this ligitation. There is no violation of any federal right. There was no federal question presented below which was decided by the state court and which is present for review by the United States Supreme Court on Writ of Certiorari. The decisions of the Kentucky courts rest upon Kentucky law only.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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